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**FILED**

**JAN 11 2015**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

*Attorneys for Utah Division of Oil, Gas and Mining*

BEFORE THE UTAH BOARD OF OIL, GAS AND MINING

*In the matter of:* reclamation at an unnamed, unpermitted mine, known by the Division as the Limestone mine, file no. S/037/0123, operated by Monument Resources, L.L.C., located in the west ½ of Section 6, Township 42 South, Range 19 East, Salt Lake Base and Meridian, in San Juan County, Utah

NOTICE OF AGENCY ACTION

Docket No. 2016-003  
Cause No. S/037/0123

The Utah Division of Oil, Gas and Mining Submits this Notice of Agency Action seeking an Order from the Utah Board of Oil, Gas and Mining pursuant to its authority under Utah Code §§ 40-8-5 and 40-8-6 and Utah Administrative Code Rule 647-3-112. Specifically, the Division seeks an Order finding that Monument Resources, L.L.C. has failed or refused to conduct reclamation and directing the Division to conduct reclamation and to seek reclamation costs from Monument Resources.

## **Introduction**

This Notice of Agency Action addresses violations of the Mined Land Reclamation Act by Respondent Monument Resources, L.L.C. and its members William Gaines and Brooke Heddlesten. Monument Resources operates a mine in San Juan County, but it does not have a permit to conduct mining operations in Utah. The Division of Oil, Gas and Mining (the Division) designated this mine as the Limestone mine (the Mine), and for record keeping purposes assigned it file number S/037/0123. The Mine is located approximately 1.2 miles north-northwest of Mexican Hat, in San Juan County, specifically in the west ½ of Section 6, Township 42 South, Range 19 East, Salt Lake Base and Meridian. Nordeen Family Properties LLC owns the surface and mineral estate where the Mine is located.

In 2010, the Division provided Monument Resources with information on obtaining a permit, but Monument Resources never filed a Notice of Intention to commence mining operations (an NOI). When the Division realized that Monument Resources had been operating the Mine without a permit, it notified the company of the requirement to obtain a permit through the Division. In a July 2014 letter, the Division ordered Monument Resources to submit an NOI and a \$150 application fee, and also notified Monument Resources that it would need to provide a reclamation surety.

Monument Resources provided the initial \$150 application fee and filed an NOI in October 2014. However, the Division determined that the NOI was not complete, and sent a deficiency letter to Monument Resources requiring it to correct the NOI and submit a reclamation surety. Monument Resources sent another incomplete NOI to the Division on

December 8. The Division combined the information from the two incomplete NOIs and provided Monument Resources with a complete NOI for signature on December 24, 2014.

In its December 24 letter, the Division also included a copy of a Reclamation Contract for signature, and reminded Monument Resources of the requirement to provide a reclamation surety. Because the Mine's disturbance covered about 3.7 acres, the Division indicated that it would require a surety in the amount of \$23,000. Monument Resources never responded. The Division sent another letter giving Monument Resources a second chance to comply with the Division's requirements by April 15, 2015. When the Division inquired as to what progress had been made, Monument Resources responded, explicitly refusing to provide a reclamation surety in accordance with the Division's requirements.

Given the company's refusal to comply with Utah law, the Division issued a Cessation Order (CO) on April 20, 2015 for willfully and knowingly conducting small mining operations without a permit. In order to abate this CO, Monument Resources had to reclaim the Mine by June 20, 2015. The Division conducted an inspection on June 25, 2015 and found that no reclamation had been conducted. The Division sent a proposed assessment for \$22,500 in civil penalties for the CO on August 14, 2015. Because Monument Resources did not request review of the fact of violation or the proposed penalties, the penalties became final on September 14, 2015. The penalties remain unpaid, and the Mine site has not been reclaimed.

### **Legal Background**

1. The Utah Mined Land Reclamation Act (the Act), Utah Code §§ 40-8-1 to -23, is meant to allow essential mining operations while requiring reclamation of lands affected by mining. The Act requires this reclamation to "prevent conditions detrimental to the general safety and

welfare of the citizens of the state and to provide for the subsequent use of the lands affected.”

*Id.* § 40-8-1. Each operator is responsible both for conducting reclamation and for the costs associated with that reclamation. *Id.* § 40-8-12.5.

2. The Rules developed pursuant to the Act are found in Title R647 of the Utah Administrative Code. The Rules divide the mining world into two categories: small mines and large mines. Small mines are those which disturb a maximum area of five surface acres if located in an incorporated area, or a maximum area of ten surface acres if located in an unincorporated area. Utah Admin. Code R. 647-1-106. Large mines disturb more than five acres in an incorporated area, or more than ten acres in an unincorporated area. *Id.*

3. Mining operations are defined as “activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit.” Utah Admin. Code R. 647-1-106. In order to fall within this definition, the operation must cause significant surface resource disturbance and involve the use of mechanized earth-moving equipment. *Id.*

4. Before beginning mining operations, an operator must file a notice of intention with the Division. Utah Code § 40-8-13. When intending to operate a small mine, the operator must submit a Notice of Intention to Commence Small Mining Operations. Utah Admin. Code R. 647-3-101. In addition, operators must provide a reclamation surety to the Division, which is meant to guarantee that land will be reclaimed to achieve its post-mining land use. Utah Code § 40-8-14; Utah Admin. Code R. 647-3-111.

5. If an operator fails or refuses to conduct reclamation, the Board may order the Division to conduct reclamation and to recover the costs and expenses of reclamation in a civil action brought by the Attorney General. Utah Admin. Code R. 647-3-112.

6. The Act and the Rules also provide for the assessment of civil penalties, which are expressly meant to deter violations of the Act. Utah Admin. Code R. 647-7-101. When the Division issues a Cessation Order and the operator fails to abate the violation in the Cessation Order, the Division automatically assesses civil penalties of at least \$750 per day of continuing violation. Utah Code § 40-8-9.1; Utah Admin. Code R. 647-7-103.

7. This legal framework allows the Division to ensure that land affected by mining gets reclaimed to reduce the negative effects of mining, “to prevent conditions detrimental to the general safety and welfare of the citizens of the state and to provide for the subsequent use of the lands affected.” Utah Code § 40-8-2.

### **Jurisdiction and Procedure**

8. The Division brings this action under the Utah Mined Land Reclamation Act, Utah Code §§ 40-8-1 to -23, which grants the Board jurisdiction over all persons and property necessary to enforce the Act. Utah Code § 40-8-5. The Act also grants the Board the power to hold hearings and issue orders based on those hearings. *Id.* § 40-8-6.

9. This proceeding will be conducted formally in accordance with Utah Administrative Code Titles R641 and R647, and with Sections 63G-4-204 to -209 of the Utah Code.

10. This proceeding affects the property interests of Monument Resources, L.L.C. Monument Resources is therefore a “respondent” as defined by Utah Administrative Code Rule 641-100-200.

11. Respondents must file and serve a written response within 20 days of the mailing date of this Notice of Agency Action. Utah Admin. Code R. 641-104-141. A party that fails to either file a response or to attend or participate in the hearing may be held in default. *Id.* R. 641-104-151.

12. Unless otherwise ordered by the Board, a hearing on this matter will take place on February 24, 2016 at 9:00 a.m. in the auditorium of the Utah Department of Natural Resources building, 1594 West North Temple, Salt Lake City, Utah.

### **Allegations**

13. Monument Resources, L.L.C. operates a mine about 1.2 miles north-northwest of Mexican Hat in San Juan County, Utah. Specifically, the mine is located in the west ½ of Section 6, Township 42 South, Range 19 East, Salt Lake Base and Meridian.

14. William Gaines and Brooke Heddlesten are the members of Monument Resources.

15. Monument Resources does not have a permit to conduct mining operations in Utah. The Division refers to the operation as the Limestone mine (the Mine), and for record keeping purposes assigned it file number S/037/0123.

16. The Mine is a mining operation as defined by Utah Administrative Code Rule 647-1-106 because Monument Resources conducted surface mining with mechanized earth-moving equipment to explore for and extract limestone, which is a mineral deposit.

17. The Division provided Monument Resources with information on obtaining a permit in 2010, but Monument Resources never filed a Notice of Intention to Commence Small Mining Operations (an NOI).

18. On July 15, 2014 the Division ordered Monument Resources to submit an NOI and to pay the \$150 application fee. The Division also notified Monument Resources that it would need to provide a reclamation surety in order to complete the application process.

19. Monument Resources paid the initial application fee and filed an NOI in October 2014. The Division deemed the NOI incomplete, and sent a deficiency letter on October 29 requiring

Monument Resources to correct the NOI and submit a reclamation surety. Monument Resources provided a second incomplete NOI on December 8, 2014. The Division combined the information and provided Monument Resources with a complete NOI for signature on December 24, 2014.

20. When the Division sent Monument Resources the NOI for signature, it also sent a copy of a Reclamation Contract for signature and reminded Monument Resources of its obligation to provide a reclamation surety. Monument Resources never responded to this request.

21. The Division sent Monument Resources another letter on March 16, 2015 providing the company with yet another opportunity to comply with the Division's requirements. The Division requested that Monument Resources do so by April 15, 2015.

22. On April 13, 2015, the Division inquired into any progress Monument Resources had made toward complying with the Division's requirements. Monument Resources responded on April 16, expressly refusing to provide a reclamation surety as required by the Act and the Rules.

23. Given the failure to provide a complete NOI and refusal to provide a reclamation surety, the Division issued Monument Resources a Cessation Order (CO) on April 20, 2015. The CO required reclamation of the Mine by June 20, 2015.

24. The Division conducted an inspection of the Mine on June 25, 2015 and found that no reclamation had occurred.

25. When an operator fails to abate a violation in a CO, a minimum penalty of \$750 per day of continuing violation automatically gets assessed. Utah Admin. Code R. 647-7-103. The

Division's practice is to charge the statutory minimum of \$750, and to cap liability at 30 days, for a total of \$22,500.

26. On August 14, 2015, the Division issued a proposed assessment for the CO. The assessment officer used Rule 647-7-103 to assess civil penalties amounting to \$22,500.

27. Monument Resources operated a mine without a permit in direct violation of the Utah Mined Land Reclamation Act. After receiving numerous requests to comply with Utah law, Monument Resources failed to do so. In addition, after receiving the CO, Monument Resources failed or refused to conduct reclamation of the Mine. This action is necessary to reclaim the Mine and to protect the environment and the general safety and welfare of the citizens of the state.



## Request for Action

Based on the factual allegations discussed above, the Division moves the Board to take the following actions:

- A. Find that Monument Resources has failed or refused to conduct reclamation;
- B. Order the Division to conduct reclamation of the Mine under Utah Administrative Code Rule 647-3-112;
- C. Request that the Attorney General recover the costs and expenses of reclamation, including attorney's fees, in a civil action against Monument Resources under Utah Administrative Code Rule 647-3-112;
- D. Request that the Attorney General and the Division seek civil penalties of \$22,500 in a civil action under Utah Code § 40-8-9.1(4); and
- E. Grant any other just and equitable relief the Board deems appropriate.

Respectfully submitted on the 11<sup>th</sup> day of January, 2016.

UTAH OFFICE OF THE ATTORNEY GENERAL



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*Attorneys for the Division of Oil, Gas and Mining*

## Certificate of Service

I certify that I caused the above Notice of Agency Action to be served on the following parties by certified mail on the 11<sup>th</sup> day of January, 2016:

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